

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,897

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare terminating her "essential person" benefits.

FINDINGS OF FACT

1. The petitioner is a disabled woman who needs daily care in her home. That care is provided by her daughter who lives with her. The mother and daughter have been receiving "essential person" benefits of \$251.00 per month for some time, as they were thought to be an eligible assistance group.
2. The petitioner's daughter has been working for over a year. The Department was aware of this fact but through its own error failed to take that fact into account when calculating the assistance group's eligibility. The error was discovered in June of 1994, at which time the Department notified the petitioners that their essential person grant would be terminated as of June 30, 1994, due to excess income.
3. The figures used to calculate the excess income were taken from four paychecks supplied by the working daughter. Those paychecks showed that the petitioner was averaging about \$432.93 per month in gross income. Because the petitioner felt that the last paychecks were not representative of her real earnings, because they contained overtime, she was allowed to submit evidence of her earnings for the first half of the year. However those total earnings showed that she had averaged about \$465.00 per week (with overtime) over the entire first half of the year. The Department elected to use the lower earnings figure of \$432.00, which is the most recent, in fairness to the petitioner.
4. The group's eligibility was calculated by adding the mother's total unearned income of \$520.87 (\$408.00 from Social Security and \$112.87 from SSI) to the daughter's net earned income of \$342.93, a figure obtained when the Department deducted a \$90.00 employment expense standardized figure from

the \$432.93 gross income figure. The total sum from the two incomes is \$863.80. The Department compared that sum to a maximum figure of \$772.06 for a two person family and determined that the petitioner's group was \$91.74 over income for a grant.

5. The Department determined that the petitioner has actually been over income for some time and should not have received the benefits in prior months. However, as the overpayment was the result of Departmental error, a further determination was made not to establish a debt or to try to collect it.

6. The petitioner's daughter disagrees with the decision terminating the essential person benefits because, even with her wages and the benefits, the family had under \$1,000.00 per month to live on, which was not adequate. She also called the termination a disincentive for her to work. She barely takes home more now that she would get on a straight benefits program. When she was advised that her mother might be eligible for attendant care services, the daughter rejected the idea, characterizing it as a waste of tax dollars when she could care for her mother if only a little extra money were provided to the family.

ORDER

The decision of the Department is affirmed.

REASONS

Regulations governing eligibility for essential person benefits provide for payment to a "person living in the same household with an aged, blind or disabled person (or couple), who ... furnishes specific care and/or services which the aged, blind or disabled person (or couple) cannot perform himself or herself (or themselves) but deems essential to stay in his or her (or their) present living arrangement and which would need to be provided otherwise if the essential person were not living in the household." W.A.M. § 2751. The regulations further require that the income of the disabled person and that of a "non-spouse essential person" living in the same household be counted together for the eligibility tests. W.A.M. § 2752.

The maximum household income to retain eligibility for a person in an independent living situation with an essential person living in the same household is \$772.06. W.A.M. § 2754, P-2740 (A). In computing what income will be counted to see if that standard is met, the following methodology is adopted:

Income Computation

All income of all assistance group members must be counted together according to income rules for the Aid to Needy Families with Children (ANFC) Program (see Sections 2250-2259) with the following exceptions:

ANFC earned income exemptions (Section 2254) are not allowed; and

SSI/AABD benefits, if received, are counted as unearned income.

The following income exemptions are allowed:

\$20 of total monthly income received by all assistance group members as:

unearned income only (other than VA pension or SSI/AABD benefits; or

earned income only (including self-employment after business expense deductions); or

any combination of above unearned and earned income; and

\$65 plus one-half of the balance of any remaining earned income received by the aged, blind or disabled member(s) only.

These rules are, to say the least, confusing because they do not talk about the interplay between the ANFC exemptions and the exemptions allowed under these regulations. The worker calculating the petitioner's eligibility used only a \$90.00 earned income deduction for the daughter's wages from employment found in the ANFC program at W.A.M. 2253.3. When asked to explain why \$20.00 was not also deducted from the group's income, or at least from the mother's unearned non-SSI income, the worker stated that "it is already in there."

The calculations provided by the Department, however, do not explain how it is "already in there". It appears from the plain meaning of the regulations that in addition to the \$90.00 deduction allowed for earned income under the income rules for the Aid to Needy Families with Children Program at W.A.M. 2253.3, the assistance group is also eligible for a \$20.00 deduction from either the mother's unearned Social Security income (but not her SSI income), the daughter's earned income from employment or a combination of the two. In this case it all amounts to the same thing, another \$20.00 deduction from the total assistance group income. The figure which should actually have been counted for the family was \$843.80.

Unfortunately, the \$843.80 figure is still in excess of the maximum amount set in the statute by some \$70.00 per month. Should the petitioner's daughter find that her actual earned income figures have declined, she should come in and have her eligibility recalculated. The Department's ultimate decision is supported by its regulations and thus must be affirmed by the Board. 3 V.S.A § 3091(d).

W.A.M. 2756

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